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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re J.W., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. J.W., Defendant and Appellant.	A145681 (Solano County Super. Ct. No. J41836)

J.W., a minor, admitted to felony possession of a firearm in a school zone after the juvenile court denied his motion to suppress evidence of a loaded handgun that was found in his backpack while he was at school.[1] He contends that his motion to suppress should have been granted because the officials who found the firearm lacked reasonable suspicion to search his backpack. We conclude that the search was reasonable and therefore affirm the judgment.

[1] Felony possession of a firearm in a school zone is a violation of Penal Code section 626.9, subdivision (b). In exchange for J.W.'s plea, three counts alleging other violations were dismissed. These counts were based onm Penal Code section 29610 (felony possession of firearm by a minor); Penal Code section 30310, subdivision (a) (misdemeanor possession of ammunition on school grounds); and Penal Code section 29650 (misdemeanor possession of live ammunition by a minor).

FACTUAL AND PROCEDURAL BACKGROUND

The Solano County District Attorney petitioned to have J.W. declared a ward of the court after J.W. was found to be carrying a loaded handgun in his backpack at school.[2] J.W. filed a motion under section 700.1 to suppress evidence related to the search, including the handgun, ammunition, and statements he made at the time of the search. In his motion, he argued that officials lacked reasonable suspicion to detain him and search his backpack.

At the hearing on J.W.'s motion, Dana Koutnik, a 911 dispatcher with the Vallejo Police Department, testified that at approximately 8:30 p.m. on June 2, 2015, she received a call from an adult male at the "We Tip" agency, who identified himself as "operator number four." Operator number four told Koutnik that an anonymous caller had reported that J.W., a student at Jesse Bethel High School, was seen carrying a gun at school for the past two weeks. The anonymous caller had seen the gun and claimed that J.W. was "intimidating other kids" with it and "threatening other kids that he was in a gang." Less than ten minutes later, operator four called dispatch again, and told Koutnik that he or she had received another call stating that J.W. and another student, L.W., "pass the gun back and forth to each other on campus." The second call about the gun came from the same person who made the first call, and the caller was a student. Koutnik responded to the information by sending a computer-aided dispatch call and by notifying the on-duty sergeant. The sergeant advised her to convey the information in an e-mail to the Vallejo Unified School District resource officer, Officer Craig Long, and she subsequently did so.

Officer Long also testified at the hearing on the motion to suppress, and he confirmed that he received the e-mail from Koutnik. He testified that the We Tip agency bills itself as a service for students to report bullying, and that the agency has placards posted in school buildings throughout the county. When he received Koutnik's email, Long verified that both J.W. and L.W. were enrolled students at Jesse Bethel High

[2] The petition was brought under Welfare and Institutions Code section 600, et sequitur. Further undesignated statutory references are to the Welfare and Institutions Code.

School. He then called the high school principal and told her that police had received a tip that J.W. and L.W. had been seen carrying a handgun on campus. After he spoke with the principal, Long went to the high school and, when he arrived, saw that J.W. was detained in the conference room immediately adjacent to the principal's office. Long observed a campus security employee, Patrick Little, direct J.W. to remove his backpack so it could be searched. J.W. refused, and stated that he had just received the backpack from someone else. Long intervened and told J.W. that campus security was permitted to search his backpack and his person. J.W. looked around the room in a nervous manner and leaned back in his chair to help secure the backpack. Long approached J.W., grabbed his right wrist, applied an arm-bar control, and lifted J.W. out of the chair, at which point Little removed the backpack. Long handcuffed J.W. and stood by while Little searched the backpack. Little unzipped the backpack and found the loaded gun and ammunition.[3]

The juvenile court denied J.W.'s motion to suppress. After conferring with his counsel, J.W. stated that he would accept a plea deal by admitting to felony possession of a firearm in a school zone in return for a dismissal of the remaining charges, while preserving his right to appeal the denial of his suppression motion. At a disposition hearing held on July 2, 2015, the court adjudged J.W. a ward of court, placed him on probation with curfew, imposed gang-related and other terms and conditions, and sentenced him to 45 days in juvenile detention, with credit for 30 days served.

DISCUSSION

A. The Legal Standards Governing Searches on School Premises

The Fourth Amendment "applies to searches conducted by school authorities." (*New Jersey v. T.L.O.* (1985) 469 U.S. 325, 337 (*T.L.O.*).) However, "the determination of the standard of reasonableness governing any specific class of searches requires 'balancing the need to search against the invasion which the search entails.' [Citation.] On one side of the balance are arrayed the individual's legitimate expectations of privacy

[3] The handgun was subsequently identified as a Ruger .22 caliber revolver, and it was loaded with six .22 caliber cartridges in its cylinder. J.W.'s backpack also contained three .380 caliber cartridges, two 9mm caliber cartridges and one .357 caliber cartridge.

and personal security; on the other, the government's need for effective methods to deal with breaches of public order." (*Ibid.*)

In the public school context, "the child's interest in privacy" must be weighed against "the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds." (*T.L.O., supra,* 469 U.S. at p. 339.) Accordingly, the high court has recognized "that maintaining security and order in schools requires a certain degree of flexibility in school disciplinary procedures" and that "the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily bound." (*Id.* at pp. 339-340.) Specifically, "school officials need not obtain a warrant before searching a student who is under their authority," nor do they need "probable cause" for a student search. (*Id.* at pp. 340-341.) "Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Determining the reasonableness of any search involves a twofold inquiry: first, one must consider 'whether the . . . action was justified at its inception,' [citation]; second, one must determine whether the search as actually conducted was 'reasonably related in scope to the circumstances which justified the interference in the first place, [citation].' " (*Id.* at p. 341.)

"Under ordinary circumstances, a search of a student by a teacher or other school official will be 'justified at its inception' when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." (*T.L.O., supra,* 469 U.S. at pp. 341-342.) This standard focuses "on the question of reasonableness" (*id.* at p. 343; see also *Maryland v. King* (2013) 133 S.Ct. 1958, 1969 [" '[T]he text of the Fourth Amendment indicates [that] the ultimate measure of the constitutionality of a governmental search is "reasonableness" ' "]), and it applies

where "school officials conduct the search 'in conjunction with or at the behest of law enforcement agencies.' [Citation.]" (*In re K.S.* (2010) 183 Cal.App.4th 72, 75.)[4]

"On appeal from a ruling denying a motion to suppress evidence, we 'exercise our independent judgment to determine whether, on the facts found by the court, the search was reasonable under the Fourth Amendment [of the United States Constitution (the Fourth Amendment)].' [Citation.]" (*In re Sean A.* (2010) 191 Cal.App.4th 182, 186.)

B. J.W.'s Search Did Not Violate the Fourth Amendment

J.W. does not contest the scope of the search under *T.L.O.*'s second inquiry. Instead, he contends under the first inquiry that the search was not " 'justified at its inception' " because there were "no reasonable grounds" for suspecting that the search would turn up a handgun in his backpack. (*T.L.O.*, *supra*, 469 U.S. at p. 342.) We are not persuaded.

A search is " 'justified at its inception' " if under "ordinary circumstances" the information constituted "reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school." (*T.L.O.*, *supra*, 469 U.S. at p. 342, italics added.) In our view, reasonable

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[4] J.W. argues alternatively that the officials' conduct violated the Fourth Amendment whether evaluated under the reasonableness standard or the probable cause standard. The probable cause standard does not apply. To begin with, J.W.'s contention that the probable cause standard applies is foreclosed because it was forfeited. At the suppression hearing, J.W. acknowledged that the search was governed by "reasonable suspicion, not probable cause." (Cf. *People v. Hawkins* (2012) 211 Cal.App.4th 194, 203 [only arguments raised before the trial court will be considered on appeal].) Furthermore, the contention fails on its substantive merits because cases have recognized that the reasonableness standard applies to school searches conducted by or with a police officer. (See *In re K.S.*, *supra*, 183 Cal.App.4th at p. 75.) We reject J.W.'s argument that *Safford Unified School Dist. No. 1 v. Redding* (2009) 557 U.S. 364 compels a different conclusion. In discussing how school searches can be *distinguished* from police searches, the high court remarked: "[T]he best that can be said generally about the required knowledge component of probable cause for a law enforcement officer's evidence search is that it raise a 'fair probability' [citation], or a 'substantial chance' [citation], of discovering evidence of criminal activity. The lesser standard for school searches could as readily be described as a moderate chance of finding evidence of wrongdoing." (*Id.* at p. 371.)

grounds existed for suspecting that the search would turn up evidence that J.W. was carrying a gun. The circumstances, far from being ordinary, were in fact extraordinary and rendered the need to search all the more compelling and immediate. Police had been informed by the We Tip operator that an anonymous caller reported that J.W. was displaying a gun at school, "intimidating other kids" with it, and "threatening other kids he was in a gang." This information presented an extreme danger that called for an immediate response. In our view, the juvenile court properly concluded that the search was reasonable under the circumstances, especially since the search itself was minimally intrusive "in light of the . . . nature of the infraction" and "objectives of the search." (*T.L.O.*, *supra*, 469 U.S. at p. 342.)

J.W. nonetheless insists that the search was not "justified at its inception." He reasons that the information leading to the search came from an anonymous source and was therefore unreliable because there were no means of testing the informant's knowledge or credibility. On this point, he relies principally on *Florida v. J.L.* (2000) 529 U.S. 266 (*J.L.*), a case arising outside the school context, in which the high court addressed "whether an anonymous tip that a person is carrying a gun is, without more, sufficient to justify a police officer's stop and frisk of that person," and concluded it is not. (*Id.* at p. 268.)

In *J.L.*, an anonymous caller reported to the police that "a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun." (*J.L.*, *supra*, 529 U.S. at p. 268.) There was no audio recording of the tip and nothing was known about the informant. Acting on the tip, two police officers arrived at the bus stop and saw three black males, one of whom was wearing a plaid shirt. (*Ibid.*) "Apart from the tip, the officers had no reason to suspect any of the three of illegal conduct. The officers did not see a firearm, and J.L. made no threatening or otherwise unusual movements . . . . One of the officers approached J.L., told him to put his hands up on the bus stop, frisked him, and seized a gun from J.L.'s pocket." (*Ibid.*)

The high court acknowledged that "there are situations in which an anonymous tip, suitably corroborated, exhibits 'sufficient indicia of reliability to provide reasonable

suspicion to make the investigatory stop.' " (*J.L.*, *supra*, 529 U.S. at p. 270.) On the facts before it, however, the high court concluded that "the tip lacked the moderate indicia of reliability" required to sustain the stop because the anonymous call concerning J.L. "provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility. . . . The reasonableness of official suspicion must be measured by what the officers knew before they conducted their search. All the police had to go on in this case was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J.L." (*Id.* at p. 271.)

J.L. is not controlling here. To begin with, in *J.L.*, unlike here, nothing was known about the informant who "neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J.L." (*J.L.*, *supra*, at p. 271.) In contrast, the anonymous tip here came through the We Tip agency, an agency expressly billed as a service for students to report school bullying. Moreover, the informant was a student at Jesse Bethel High School and expressly stated he or she had witnessed J.W. displaying the handgun on school grounds and using it to threaten and intimidate other "kids." Also, the informant called back a second time to provide additional information that J.W. was passing the gun back and forth on campus with L.W. Subsequently, Officer Long conducted a search of the school database and confirmed that J.W. and L.W. were indeed both currently enrolled as students at the school. These circumstances evince the "moderate indicia of reliability" found lacking in *J.L.*

In addition, *J.L.* itself acknowledged that "[f]irearms are dangerous, and extraordinary dangers sometimes justify unusual precautions," as well as the possibility that "the danger alleged in an anonymous tip might be so great as to justify a search even without a showing of reliability." (*J.L.*, *supra*, 529 U.S. at 272-273.) Accordingly, the high court specifically limited its holding, stating, "Nor do we hold that public safety officials in quarters where the reasonable expectation of Fourth Amendment privacy is diminished, such as . . . schools, [citation], cannot conduct protective searches on the basis of information insufficient to justify searches elsewhere." (*Id.* at p. 274.) Thus,

even if we were to view the indicia of reliability of the informant's tip here to be marginal, we would still conclude that the search was reasonable based on the "extraordinary dangers" presented by the possibility that a student with gang affiliations was brandishing a handgun at school. (*J.L.*, *supra*, 529 U.S. at p. 272.)

The search of J.W.'s backpack was reasonable and consistent with the Fourth Amendment.

DISPOSITION

The judgment is affirmed.

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Humes, P.J.

We concur:

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Dondero, J.

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Banke, J.